UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

IN RE:	:	
	:	14-MD-2573 (VEC)
LONDON SILVER FIXING, LTD., ANTITRUST LITIGATION	:	14-MC-2573 (VEC)
	:	**ORDER NO. 3**
This Document Relates to All Actions	:	

VALERIE CAPRONI, United States District Judge:

Plaintiffs in these cases bring claims under the Commodity Exchange Act ("CEA"), 7 U.S.C. § 1 *et seq.*, antitrust claims under the Sherman Act, 15 U.S.C. § 1, and claims for unjust enrichment.[1] On November 3, 2014, the Court ordered briefing from Plaintiffs' counsel seeking appointment as interim class counsel pursuant to Rule 23(g)(3) of the Federal Rules of Civil Procedure. *See* Order 2. The Court received two joint applications, one from Cohen Milstein Sellers & Toll PLLC with Wolf Haldenstein Adler Freeman & Herz LLP and one from Lowey Dannenberg Cohen & Hart, P.C. ("Lowey") with Grant & Eisenhofer P.A. ("Grant & Eisenhofer"). For the following reasons, the Court concludes that the team comprised of Lowey and Grant & Eisenhofer (the "Lowey-Grant" team) would best serve the interests of the class.

DISCUSSION

Under Rule 23(g)(3) of the Federal Rules of Civil Procedure, the Court "may designate interim class counsel to act on behalf of a putative class before determining whether to certify the action as a class action." With eight class actions presently filed as members of this multi-district litigation, interim class counsel is necessary to coordinate efficiently the competing claims and plaintiff groups. *In re LIBOR-Based Fin. Instruments Antitrust Litig.*, No. 11-MD-

[1] The structure of the legal claims in each of the above cases differs to some degree, but all claims are based on largely the same core factual allegations.

2262, 2011 WL 5980198, at *2 (S.D.N.Y. Nov. 29, 2011) ("The designation of interim class counsel is especially encouraged in cases . . . where there are multiple, overlapping class actions that require extensive pretrial coordination.").

In general, "[c]andidates for interim class counsel are evaluated under the same rubric as potential counsel for certified classes." *Deangelis v. Corzine*, 286 F.R.D. 220, 223 (S.D.N.Y. 2012) (citing *In re Crude Oil Commodity Futures Litig.*, 11-CV-3600, 2012 WL 569195 (WHP), at *1 (S.D.N.Y. Feb. 14, 2012)). Thus, the Court must consider "(i) the work counsel has done in identifying or investigating potential claims in the action; (ii) counsel's experience in handling class actions, other complex litigation, and the types of claims asserted in the action; (iii) counsel's knowledge of the applicable law; and (iv) the resources that counsel will commit to representing the class." Fed. R. Civ. P. 23(g)(1)(A). The Court may also "consider any other matter pertinent to counsel's ability to fairly and adequately represent the interests of the class." Fed. R. Civ. P. 23(g)(1)(B). Where, as here, "more than one adequate applicant seeks appointment, the court must appoint the applicant best able to represent the interests of the class." Fed. R. Civ. P. 23(g)(2).

After examining the competing applications, the Court concludes that both applicants have conducted sufficient work in investigating potential claims against Defendants, have adequate experience handling class actions, and possess sufficient knowledge of the applicable law. The complaints filed by the competing applicants reflect that expertise and the effort that the applicants have made to investigate their claims to date. *See* Fed. R. Civ. P. 23(g)(1)(A)(i). While both are the products of significant expertise, the Lowey-Grant complaint reveals a particularly outstanding effort due to the thorough and contemporaneous nature of the allegations. *See DePaoli v. London Silver Mkt. Fixing, Ltd.*, No. 14-CV-9068(VEC), Dkt. 1. Both applications feature attorneys with laudable expertise in handling class actions in general

and CEA and antitrust law in particular. Fed. R. Civ. P. 23(g)(1)(A)(ii)-(iii). The resources that the firms will bring to bear on this case are comparable, although Lowey is smaller than the other three firms. Fed. R. Civ. P. 23(g)(1)(A)(iv).

The Court must then consider which team is "best able to represent the interests of the class." Fed. R. Civ. Proc. 23(g)(2). The specific attorneys that each team proposes to staff on the case comprise an impressive group capable of confronting the significant obstacles that this case will undoubtedly present. And although both teams consist of at least some attorneys who are committed to other large class actions, the Court does not expect that these assignments will have a detrimental effect on the prosecution of the litigation here. Further, given this case's size and complexity the Court finds that the hourly rates of the proposed attorneys are generally reasonable. Those rates are also largely consistent across the applications. Both teams also describe their respective in-house document hosting and review capabilities, which will result in additional savings for the putative class.

Although the applications are comparable, the Court is persuaded that the Lowey-Grant team will better represent the putative class. First, the Lowey-Grant team's approach in tying its requested attorneys' fees to the size of any common fund weighs in its favor. The proposed structure more effectively ensures that counsel's compensation will be adequate without comprising an undue portion of a shared recovery. Second, the Lowey-Grant application complied with Order 2 more precisely. In a complex case with extended briefing and potentially significant discovery disputes, strict adherence to the Court's orders is particularly valuable.

The Court is also impressed by the Lowey-Grant team's engagement with additional resources. The Lowey-Grant team has engaged experts, including Dr. Rosa M. Abrantes-Metz, who is consulting in support of plaintiffs in a related MDL action. *See Moran v. Bank of Nova Scotia*, No. 14-CV-2214(VEC), Dkt. 18 ¶ 4. Moreover, Lowey and Grant & Eisenhofer both

have ties to London firms that should mitigate the burden of any significant discovery in Europe. Finally, although neither team represents an institutional client, the Lowey-Grant team's clients have a considerably more significant stake in the outcome of the litigation.

In light of this litigation's scope, the expertise of the Lowey-Grant team in commodities litigation, the proposed structure of their future requests for attorneys' fees if they are successful, the outside expertise with which the team has aligned itself, and the quality of the team's memorandum and complaint, the Court concludes that the Lowey-Grant team is best able to represent the putative class.

CONCLUSION

For the foregoing reasons, the Court appoints Lowey Dannenberg Cohen & Hart, P.C. and Grant & Eisenhofer P.A. as interim class co-counsel. The Clerk of the Court is respectfully directed to terminate Dkts. 13 and 14.

SO ORDERED.

Date: November 25, 2014
New York, New York

Valerie Caproni

VALERIE CAPRONI
United States District Judge